

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

<p>PRESTON PERNELL MONTOYA, Petitioner, vs. J.W. COX, IN HIS CAPACITY AS WARDEN OF YANKTON FEDERAL PRISON CAMP; Respondent.</p>	<p>4:21-CV-04057-KES ORDER</p>
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Petitioner, Preston Pernell Montoya, an inmate at the Yankton Federal Prison Camp, in Yankton, South Dakota, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. The court directs the petition in this case be served and that a response be filed.

Mr. Montoya has also filed a motion for appointment of counsel. Docket No. 4. There is no recognized constitutional right under the Sixth Amendment for the appointment of counsel in habeas corpus cases. Hoggard v. Purkett, 29 F.3d 469, 471 (8th Cir. 1994). Habeas actions are civil in nature, so the Sixth Amendment right to counsel applicable in criminal proceedings does not apply. Id. The court does, however, have discretion to appoint counsel if the interests of justice so require or if an evidentiary hearing will be held. See 18 U.S.C. § 3006A(a)(2)(B). The court will not appoint counsel at this juncture of the proceedings. This case is not legally or factually complex and the court is confident movant can present his issues himself at this point. Should an evidentiary hearing become necessary, the court will appoint counsel.

Accordingly,

IT IS ORDERED that:

- (1) the Clerk of Court shall serve upon respondent and the United States Attorney for the District of South Dakota a copy of the petition and this order;
- (2) within 21 days after service, respondent is directed to show cause why a writ pursuant to 28 U.S.C. § 2241 should not be granted;
- (3) petitioner may file a reply within 14 days of service of the respondent's response;
- (4) petitioner's motion to proceed in forma (Doc. 2) is granted and he shall pay the \$5.00 filing fee to the clerk of court by May 7, 2021; and
- (5) petitioner's motion for appointment of counsel (Doc. 4) is denied.

DATED this 8th day of April, 2021.

BY THE COURT:



VERONICA L. DUFFY
United States Magistrate Judge